

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN W. HOLT

Claimant

VS.

J & J CONTRACTORS

Respondent

AND

UTICA NATIONAL INSURANCE CO.

Insurance Carrier

Docket No. 1,001,535

ORDER

Respondent and its insurance carrier request review of the April 23, 2003 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) determined the claimant did not suffer an intervening accident and any additional injury claimant may have suffered was a natural and probable consequence of the accidental injury suffered on November 17, 2000. Consequently, the ALJ ordered respondent to pay temporary total disability compensation and temporary partial disability for certain delineated time periods.

The respondent argues that Dr. Glenn M. Amundson's office notes indicate that when claimant was released to return to work after an IDET procedure, he aggravated and reinjured his back. The respondent argues claimant suffered a new intervening injury and further compensation for a new injury is not the responsibility of respondent and its insurance carrier, Utica National Insurance Co.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant is the co-owner of the respondent, J & J Contractors. On November 17, 2000, claimant was up on a ladder which slid from underneath him. Claimant fell approximately 14 feet, landed feet first and then fell back on the ladder. Claimant injured his back, leg and arm in the fall.

After a preliminary hearing held on November 22, 2002, the ALJ designated Dr. Glenn M. Amundson as the treating physician. On February 4, 2003, Dr. Amundson performed an IDET procedure on claimant's back at L4-5. After the IDET procedure the claimant was off work and taking pain medication. Claimant indicated that he initially felt better during this time period and was hopeful the IDET procedure would work. Claimant later was released to light-duty work which he described as basically consulting but that he did solder some pipes together.

It is well established under the Workers Compensation Act in Kansas that, when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.¹

Respondent argues that Dr. Amundson's office notes and a letter the doctor sent to claimant's attorney indicate that when claimant returned to light-duty work he suffered either an aggravation or new intervening back injury.

At the office visit with Dr. Amundson's physician's assistant on February 14, 2003, claimant reported that although he remained sore his condition was improved. Claimant noted that he had been taking pain medication and just laying on the couch. Claimant was provided a back brace, given restrictions and returned to light-duty work.

When claimant returned for his follow up office visit with Dr. Amundson on March 21, 2003, the doctor's office notes of that visit reported:

He has been doing plumbing, flooring, electrical work, and basically states that with repetitive bending and lifting in the early postoperative period that most of his symptoms that were completely relieved postoperatively by surgery have returned.

In a letter to claimant's attorney which provided a summary of claimant's office visit on April 16, 2003, Dr. Admundson stated:

He returns to clinic today stating he is basically the same. He feels he has returned to his baseline preoperative status. He underwent IDET in the very early postoperative period and was forced to return to work as our last note outlines. He states this return to work aggravated and reinjured his back, and shortly after the

¹ *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

period where he had absolutely no symptoms and had become completely asymptomatic, he had returned to his baseline state.

Respondent argues this narrative clearly indicates claimant suffered a new intervening injury upon his return to work after the IDET procedure. If Dr. Amundson's letter and office notes were the only evidence regarding claimant's condition, there would be some merit to respondent's argument.

The difficulty with respondent's position is that claimant testified and denied that he suffered additional injury that worsened his condition. Instead, claimant notes that when he did nothing after the IDET procedure his condition improved, but as he became active his back condition was the same as before the IDET procedure. And claimant denied he made the statements the doctor attributed to him. Simply stated his condition, while initially better while he was on pain medication and inactive, returned to the same condition it had been before the IDET procedure when claimant returned to light-duty activities. It is not inconsistent to report improvement while inactive and on pain medication but to discover the symptoms have not improved when an attempt is made to become active. Stated another way, there was no improvement following the IDET procedure.

The Board finds the ALJ, in specifically finding claimant did not suffer an intervening accident, had to conclude that claimant's testimony was truthful. The ALJ had the opportunity to evaluate claimant because he testified in person at the preliminary hearing. In circumstances such as this, where there may be conflicting evidence, the Board finds it is appropriate to give some deference to the ALJ's conclusions. The Board concludes that claimant's testimony establishes he did not suffer an intervening accident. Consequently, the Board affirms the ALJ's decision.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated April 23, 2003, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of May 2003.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation